EVIDENCE—ACCOMPLICE—SEPARATE CRIMES. — Defendant was indicted for the crime of receiving stolen property. Defendant asked for an instruction at the trial that the testimony of the thief should be treated with caution, on the ground that the uncorroborated testimony of an accomplice is entitled to diminished credibility. *Held,* that the instruction was properly refused since the two crimes were distinct—the witness could not be indicted for the same crime that defendant was indicted for. *Bailey* v. *State* (Fla., 1918), 79 So. 748.

While most courts seem agreed that the testimony of an accomplice should be treated with suspicion if uncorroborated, they are not all agreed in the definition of 'accomplice'—especially where the act committed by the witness falls into a separate class of crime. The principal case, however, is with the weight of authority. A purchaser of liquor sold in violation of the law is not an accomplice of the seller. *Terry* v. *State,* 44 Tex. Crim. Rep. 411 (nor can he be convicted as an acessory), *Lott* v. *U. S.* 205 Fed. 28; the perjurer is not an accomplice of the suborner, *Stone* v. *State,* 118 Ga. 705, 98 Am. St. Rep. 145; the donor or offeror of a bribe is not the accomplice of the receiver, *State* v. *Durham,* 73 Minn. 150; *State* v. *Wappenstein,* 67 Wash. 502—*Contra, Ruffin* v *State,* 36 Tex. Crim. Rep. 565; the participants in an unlawful game of cards are not accomplices to one another where each could be convicted of the individual crime, *Com.* v. *Bossie,* 100 Ky. 151; nor is the purchaser of a lottery ticket the accomplice of the seller, *Boyd* v. *Com.,* 141 Ky. 247. In *State* v. *Kuhlman,* 152 Mo. 100 it was held, as in the principal case, that the thief is not the accomplice of the one who receives stolen goods. But in *People* v. *Coffey,* 161 Cal. 433, the strongest of the *contra* cases, it was held that the offeror of a bribe is the accomplice of the acceptor on the reasoning that an accomplice is "anyone concerned in the commission of a crime". The adherence to this broad definition renders it unnecessary to consider whether the crimes are distinct. The other test is whether the witness could have been convicted for the offense as principal. As far as the reason of the thing goes it does not appear why the fact that conviction cannot be had for the same crime should have the effect of making the testimony more competent; the witness might seek immunity for the crime which he has committed as an associate just as readily as he would seek immunity for a crime which he and the defendant had committed as principals. As long as they are associates in crime it can be of no consequence that the crimes are technically separated—the argument of the prevailing opinion is mathematical but hardly meritorious. It can be condoned only on the ground that there is some existing tendency to do away with this rule of corroboration of the testimony of accomplices. WIGMORE, Sec. 2057.

EVIDENCE—ADMISSIBILITY—UNLAWFUL SEARCH OR SEIZURE.—While travelling on a public highway defendant was stopped by a deputy sheriff who searched his automobile and took therefrom certain intoxicating liquors. The sheriff had no search warrant but had with him a copy of the state law which gave to the sheriff the right of search without a search warrant where he had probable cause to suspect that intoxicating liquors were being trans-

ported within the state of Idaho by means of automobile, truck, wagons, etc. Before trial the defendant petitioned for the destruction of the liquor and for an order that the same should not be used as evidence against him on the ground that the statute under which the sheriff acted was unconstitutional as contrary to the search and seizure clause of the state constitution. The petition was denied and the defendant was convicted. The Supreme Court admitted that the statute was unconstitutional but *held* that the evidence was not rendered inadmissable by reason of its having been disclosed by an unlawful search or obtained by an unlawful seizure. Conviction affirmed. Morgan, J., dissenting. *State* v. *Anderson* (Idaho, 1918), 177 Pac. 125.

The state and federal courts are in direct conflict on this question of the admissibility of evidence obtained in violation of the search and seizure clauses of the state and federal constitutions. By a great number of decisions the state courts have admitted such evidence. The Supreme Court of the United States, on the other hand, has vigorously denied admissibility in the few cases that have arisen. It is submitted that the two views cannot be reconciled but that they can be explained as a necessary consequence of the widely different demands put upon the two governments. The states are beset with the demand for a thorough and searching police system which will insure a maximum of apprehension of all crimes committed. It is a serious problem of local government to be able to deal effectively with the vast number of crimes that are committed within its jurisdiction. While the states have generally followed the federal constitution in their inclusion of a bill of rights with its search and seizure clauses and clauses against self-incrimination they seemed to realize, also, that here was an immunity which might seriously hinder police administration. As a result we have in the Idaho constitution a clause permitting arrest without warrant where the officer has information which prompts him to believe that a public offence is being committed. It is apparent, then, why the state courts should be willing to blink at the search and seizure clause, admit the evidence, *Williams* v. *State*, 100 Ga. 511, and tell the criminal to seek his redress against the sheriff. The rule that collateral issues will not be raised is, consequently, strictly followed. Professor WIGMORE is thoroughly in accord with this point of view. Sec. 2183, 2263-4. The federal government, however, is not troubled with that vast number of criminal cases which is a characteristic feature of the state administration. Its problem of police administration is, comparatively speaking, an insignificant one. The danger of procrastination through the raising of collateral issues is far less serious. Furthermore, the Supreme Court has been more astute to protect the fundamental guarantees of the Constitution. The history of that court indicates that it has refused to close its eyes to a violation of any of these rights or to relax in the realization of these rights merely because a collateral issue would be raised. "The efforts of the courts and their officials to bring the guilty to punishment," says Mr. Justice DAY in *Weeks* v. *U. S.*, "praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land."

232 U. S. 383, 393. There are but few state courts following this view. *Town of Blacksburg* v. *Beam,* 104 S. C. 146, L. R. A. 1916 E. 714; *Iowa* v. *Sheridan,* 121 Ia. 164, where the court said that to allow the evidence would be to "emasculate all constitutional guaranty and deprive it of all beneficial force or effect in preventing unreasonable searches and seizures". The Georgia Court of Appeals refused to follow, for a time, the leading case of *Williams* v. *State, supra,* and declined to admit such evidence. *Underwood* v. *State,* 13 Ga. App. 206. But the later decisions have returned to the conventional state view. *Hornbuckle* v. *Town of Decatur,* 18 Ga. App. 17. While there is apparent conflict, then, it appears that each view is justified under the circumstances peculiar to the jurisdiction. They were nearly in accord when *Adams* v. *U. S.* was decided, but *Weeks* v. *U. S., supra,* removed all doubts and asserted the theory of non-admissibility in the most vigorous terms.

EVIDENCE OF NEGLIGENCE—PROXIMATE CAUSE.—In *Todd* v. *Traders' and Mechanics' Insurance Company* (Mass. 1918), 120 N. E. 142, plaintiff brought his action to recover on a fire insurance policy for destruction by fire of certain buildings. The fire which destroyed the buildings accidentally caught from one set by plaintiff without getting permission of the fire-warden as the law required. Defense was made that because the fire was set in violation of law the plaintiff's cause of action was defeated on the theory of contributory negligence.

It would seem that the case was disposed of when it was determined, in accord with the universally recognized rule, that the ordinary fire insurance policy protects the insured against his own negligence, but the court discusses the question of whether violation of law is evidence of negligence to defeat a cause of action, itself founded in negligence. It well states the doctrine that "the mere fact that he, (plaintiff), was violating a statute or ordinance when injured does not necessarily prevent his recovery. Such violation is considered evidence of negligence on the part of the violator, as to all consequences that the statute was intended to prevent". The court concluded that the failure to get the fire-warden's permission was a mere attendant circumstance of his injury and not a proximate contributing cause, and applying the above principle overruled the defense There is plenty of authority in Massachusetts as well as elsewhere, to justify the recognition of the principle and its application. *Moran* v. *Dickinson,* 204 Mass. 559; *Bourne* v. *Whitman,* 209 Mass. 155; *Hughes* v. *Atlantic Steel Co.,* 136 Ga. 511. One is impressed with the rapidity with which things now move in that once conservative, puritanic state of Massachusetts. One is almost impelled to wonder whether the nimble-minded Celt may not have his hand on the throttle. It is but three short decades ago that a sin-sick sinner over-anxious for his soul's welfare, took to the highway with his good horse and carriage to attend a religious meeting on Sunday. He hitched his horse to the fence by the roadside and while he was at his devotions another recklessly injured Dobbin and the carriage. The court which pronounced this opinion in *Todd* v. *The Insurance Co.* told the refreshed sinner that because his horse and carriage had reached the place of injury by having been driven there on